

EXHIBIT “C”

AIA[®] Document A104[™] – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

20th *ML* *JS*
AGREEMENT made as of the ~~14~~²⁰th day of October in the year 2021
(In words, indicate day, month and year.)

DS
CB

BETWEEN the Owner:
(Name, legal status, address and other information)

11/1/2021 | 1:45 PM ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

KLS Logistics, Inc
c/o DHL Supply Chain (USA)
360 Westar Boulevard
Westerville, Ohio 43082
Attention: Legal Department

and the Contractor:
(Name, legal status, address and other information)

Scungio Borst Associates
2 Riverside Drive, Suite 500
Camden, NJ 08103
Phone: 856.757.0100

for the following Project:
(Name, location and detailed description)

PLCB Warehouse Improvements – Phases 2
11601 Roosevelt Blvd
Philadelphia, PA 19154

This project is the improvement work to the existing active Pennsylvania Liquor Control Board distribution building. Owner leases the building from NP Roosevelt Industrial II, LLC ("Landlord") The improvements for these phases consists of electrical and plumbing work for new equipment placement and relocation of existing equipment along with associated work as well as new sprinkler lines and reworking existing sprinkler heads in select storage racks.

The Architect:
(Name, legal status, address and other information)

N/A

The Owner and Contractor agree as follows.

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EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☒ [X] The date of this Agreement.

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- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

- ☐ February 8, 2022 Based on Contract Execution Date
- ☒ By the following date: January 31, 2022

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

11/1/2021 | 1:45

Portion of Work

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- ☒ Stipulated Sum, in accordance with Section 3.2 below
- ☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- ☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be Eight Hundred Ninety-Six Thousand One Hundred Ninety-Two and 00/100 Dollars (\$ 896,192.00), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

§ 3.2.2 Unit prices, if any:

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(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price
Permit Allowance	\$1,257.00

§ 3.2.4.1 In preparing the Contractor's Stipulated Sum Price proposal, due to the lack of existing documentation in creation of the Scope of Work, the Contractor has included a contingency for the Contractor's use following notice to and approval by Owner and in accordance with §3.2.4.2 and §3.2.4.3 to cover those costs that are included in the Stipulated Sum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.4.2 The Contractor Contingency shall exist to cover expected but unknown costs that are not detailed in the Stipulated Sum Price, or increased costs properly incurred in the performance of the Work which arise after the beginning of the Work and which were and which could not have reasonably been anticipated, but which are not properly considered a Change Order, such as (i) refinement of details of design within the scope and standard of quality and quantities on which the Stipulated Sum Price is based, (ii) schedule acceleration, used in the interest of the Contractor to benefit the Project schedule through the use of premium time or overtime for select trades or equipment costs (except to the extent the Contractor or a Subcontractor is at fault), (iii) shift work, design conflicts and changes in the final design plans (iv) availability of material, material or labor cost escalations, (v) corrective Work as a result of damage by parties unknown, or (vi) any other items or costs necessary or appropriate to the timely and proper completion of the Project. Amounts may be charged against Contingency only with the Owner's written consent, which shall not be unreasonably withheld. When Owner has approved a draw against Contingency, the Contractor shall increase the relevant Trade Work budgeted line item(s) by the amount of the decrease the Contingency line item accordingly. **In no circumstances shall Contingency be transferred or applied to Contractor's staffing costs or General Conditions, unless approved in advance by Owner.**

§ 3.2.4.3 The Contractor's contingency is not intended for nor shall it be used to pay for costs related to the following: errors or omissions in the information provided to the Contractor in developing the Scope of Work; discrepancies in the construction of the existing building pertaining to applicable building code requirements; and/or enhancements or additions to the Scope of Work requested by the Owner appropriately addressed under Article 13.

§ 3.2.4.4 Unspent Contingency. Any unspent contingency remaining as of the date of final completion shall be returned to the Owner by the Contractor with the remaining balance due the Owner issued as a deduct Owner Change Order.

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§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

\$500.00 per day

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment and partial lien releases for Contractor, all subcontractors, sub-subcontractors and material suppliers submitted to the Owner by the Contractor and draw request submitted by the Owner, Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, :

§ 4.1.3 Provided that an Application for Payment is received by the Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same month subject to Contractor submitting required partial lien releases for prior payment and Owner approval of requested percent complete progress payments, which shall not be unreasonably withheld. If an Application for Payment is received by the Owner after the date fixed above or revisions to initial Application for Payment submission are necessary and provided to Owner in a timely fashion, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner will withhold retainage from the payment otherwise due as follows:

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Retainage amounting to ten percent (10%) of the value of each subcontractor's work included in each progress payment until Substantial Completion. At the first Application for Payment submitted after Substantial Completion (as defined in section 15.6.3), retainage shall be reduced to five percent (5%) for all subcontractors and vendors.

No retainage will be held against Contractor's General Conditions, Staffing, Insurance, Taxes, Overhead and Fee.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

prime rate plus 1

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when Owner has determined that the Work has been completed and accepted by Owner

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate of Occupancy has been delivered to the Owner by Contractor.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the Final Payment conditions above have been completed.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 21.6 of this Agreement
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

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§ 6.1.3 The Supplementary and other Conditions of the Contract:

See attached Exhibit "C"

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

N/A

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See attached Exhibit "C"

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

☒ [X] Exhibit A, Determination of the Cost of the Work.

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

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Exhibit "B"	Proposal Form
Exhibit "D"	Scope Clarifications and Exclusion
Exhibit "E"	Contractor's Preliminary, Not for Construction Schedule and Sequence of Work
Exhibit "F"	Labor Rates

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Contractor and Contractor's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Contractor and Contractor's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Contractor's or Contractor's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Contractor and Contractor's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

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(Paragraphs deleted)

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be deemed mandatory, non-waivable and an absolute precondition to the relief sought by the party required to provide notice, and provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, by certified or registered mail providing proof of delivery or by electronic transmission

(Paragraph deleted)

§ 7.9.2 Notice of Claims shall be provided in writing as set forth in §7.9.1, above, and shall be deemed duly served only if delivered to the designated representative of the party to whom the notice is being addressed only if served by certified or registered mail or by courier with proof of delivery or by overnight delivery with record of delivery. A party may provide electronic notice, which will be effective upon receipt if such is also delivered by one of the methods above.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site upon request of the Contractor.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. All of the above shall be approved and/or secured as a condition precedent to Owner's issuance of Notice to Proceed.

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§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without further notice and without prejudice to any other remedies the Owner may have, correct such default or neglect. The Owner may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for an Architect's services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR**§ 9.1 Review of Contract Documents and Field Conditions by Contractor**

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

(Paragraph deleted)

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before commencing on-site Work and before starting each portion of the Work, carefully study and compare the various Contract Documents relative to the site and that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, The Contractor shall promptly report to the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Contractor's proceeding with the Work or such portions of it as are designated in this Section shall constitute a representation by the Contractor that it has made a reasonable inspection and has satisfied itself that the Work can be performed consistent with the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner may require. Notwithstanding the preceding sentence, Contractor shall perform its Work consistent with and in accordance with applicable laws, ordinances, codes, rules and regulations as well as with all applicable industry standards set forth in the Plans and Specifications pertaining to the construction.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall assign a full time, qualified superintendent to oversee the Work, who shall be present at all times when Contractor's forces or those of its subcontractors are present. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

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§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall require its forces and those of its subcontractors to comply with all worksite requirements of the Owner and shall protect Owner's property from damage during the performance of the Work.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit for a period of one year from the Date of Substantial Completion. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Unused portions of Owner Allowances will be returned to the Owner as a deduct change order less the value of the Contractor's Fee.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. In the event of any delays to the project schedule which are not subject to a time extension or otherwise excusable under the terms of the Contract, the Contractor shall promptly provide upon request

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by the Owner or the Construction Manager a make-up schedule providing for completion at Contractor's cost, of the work within the Contract duration.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner at time of Notice to Proceed and as adjusted thereafter by contract progress and / or modification.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit in a timely fashion with sufficient time for review without affecting the Project Schedule, to the Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents together with any requests for information, in coordination with the Contractor's construction schedule and in such sequence as to allow the Owner reasonable time for review. Contractor shall identify all long lead material or equipment and shall include such lead times within its Project Schedule. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals. In the event that Contractor issues a submittal for the Owner review that proposes changes from the Contract Documents, Contractor shall advise and identify any such deviations as part of the submittal and shall provide any information requested by the Owner to support the request for approval of such submittal.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required by the Contract Documents, the Owner will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Owner will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Owner's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Owner will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall observe all site use limitations and restrictions as may be required by the Landlord and shall not interfere with Landlord's use of its property.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner, the Landlord with access to the Work in preparation and progress wherever located.

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§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Landlord, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 9.15.3 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Landlord and its agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any claims by its subcontractors or suppliers for payment for work, services, labor materials or equipment provided to the Contractor for the performance of the Work under this Contract where Owner has paid Contractor for such work, services, labor, materials or equipment or where such is being sought as extra or changed work on the part of the subcontractor or supplier which has not been subject of a Change Order or Change Directive issued under Article 13, or a Claim, as issued under Chapter 21, of this Contract.

ARTICLE 10 OWNER AS CONTRACT ADMINISTRATOR

§ 10.1 The Owner will provide administration of the Contract as described in the Contract Documents

(Paragraph deleted)

§ 10.3 The Owner will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Owner will be reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Contractor (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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§ 10.5 Based on the Owner's evaluations of the Work and of the Contractor's Applications for Payment, the Owner will review and certify the amounts due the Contractor and will issue Payment in such amounts.

§ 10.6 The Owner has the authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Owner will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

(Paragraph deleted)

§ 10.9 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner has made reasonable written objection within five days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 Upon request by Owner through the Construction Manager, Contractor shall provide copies of subcontractor certificates of insurance to the Owner and shall require subcontractors to add the Owner, its Designee, and/or Landlord to the policies as "additional insureds" with primary and non-contributory coverage.

§ 11.5 For any trade requiring a government issued license or registration, Contractor shall only engage licensed or registered subcontractors to perform that Work.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.1.1 The parties understand and agree that the Owner will engage contractors to perform separate work functions. Contractor shall provide for and allow staging and access to the site for their work as set for the below and shall include their work within the Project Schedule and coordinate the scheduling of such separate contractors.

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§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, and Contractor or by written Construction Change Directive signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. A signed Change Order shall be deemed final for all changed, added or deleted Work and all schedule impacts associated with the described Work.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request partial payment for Work completed pursuant to the Construction Change Directive. The Owner will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Contractor will prepare a Change Order for Owner Review and Approval. Such approval shall not be unreasonably withheld. Failure to agree upon a price for increased or decreased cost, or a dispute over whether or not the disputed work is changed or within Contractor's scope of work under this Contract shall not excuse the Contractor from performing as directed and the parties reserve the right to file a Claim under the terms of this Contract.

§ 13.3 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work until it receives a written directive, at which time it shall promptly proceed with the identified Work even if there is disagreement as to the cost or time impact, which shall be addressed through a Claim as set for the herein.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Owner in accordance with Section 15.6.3.

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§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner and Contractor may mutually determine, subject to the provisions of Article 21. The extension of time shall be the exclusive remedy for the contractor and under no circumstances shall owner be subject to increased costs to the Contractor associated with any such delays, unless Owner, its agents or representatives, the Government or Landlord caused the delay

§ 14.6 COVID-19. The Owner and Contractor acknowledge the present and ongoing circumstances regarding the novel coronavirus / COVID-19 pandemic ("COVID-19"). The Contractor represents to the Owner that it has considered and planned for the Work under these present conditions, and agrees to perform it for the Contract Sum and within the Contract Time – subject to adjustments as provided in this Agreement for non-COVID-19 changes, if any – based on information currently reasonably available concerning COVID-19, including but not limited to relevant health and safety regulations and restrictions. In the event the Contractor contends that changes after the date of this Agreement to the COVID-19-related laws, rules, orders, regulations, or directions by any governmental authority with jurisdiction over the Project will impact the Work, including any potential savings or schedule expediting, the Contractor will immediately notify the Owner in writing with a description of the potential impacts and the Contract Time and Contract Sum will be equitably adjusted for such changes to the COVID-19-related laws, rules, orders, regulations, or directions. Additionally, if a Subcontractor, Sub-subcontractor or supplier must cease operations or otherwise cannot progress its work as anticipated due to the impacts of COVID-19, such resulting delay to the progress of the Work shall be considered a Force Majeure Delay.

In order to assure that the Contractor and its subcontractors are adhering to CDC guidelines and the directions by local health officials, the Owner and Contractor hereby agree to act together in good faith to address the requirements of the situation including, but not limited to, any need to review the Project schedule, create a logistics plan, or other special jobsite procedures. Notwithstanding the foregoing, the Contractor shall be solely responsible for implementing these procedures in addition to its already existing health and safety requirements. The Contractor shall report to the Owner weekly during the pendency of the COVID-19 pandemic on the jobsite conditions and the Contractor's ongoing efforts to ensure compliance with these measures. Notwithstanding the foregoing, the Owner will not have any control over the Contractor's means and methods of construction.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price Cost of the Work under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

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(Paragraphs deleted)

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Stipulated Sum Price cost breakdown (Exhibit "B") with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

(Paragraph deleted)

§ 15.3 Applications for Payment

§ 15.3.1 On the first business day of each month, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner require, including all subcontractor work and invoices for work encompassed within the application; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. Contractor shall provide lien waivers with each application for payment, including for progress and final applications.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Contractor, for such amount as the Owner determines is properly due, or notify the Contractor of the Owner's reasons for withholding certification in whole or in part as provided in Section 15.4.3. No certificate for payment shall be effective unless and until the Contractor shall provide for itself and for subcontractors performing work or primary suppliers providing materials or equipment encompassed within the payment application a waiver and release of lien for prior work performed or materials and equipment provided and for the work, materials and equipment in the payment application, subject only to Owner's payment of the instant application.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner, based on the Owner's evaluations of the Work and the data in the Application for Payment, that, to the best of the Owner's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. Following review of a Payment Application, the Owner will identify the amount of the Application which is approved and provide Notice to the Contractor of any disapproved sums no later than twenty (20) days after receipt of the Application by it or its designee. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

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inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor as provided in Section 15.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner, Landlord or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 the filing of any lien by a subcontractor or supplier to the Contractor or to a subcontractor of the Contractor on work previously paid for by or on behalf of the Owner or for work not subject to an approved change order by the Owner.
- .9 rejection by the landlord or lender of Work in place encompassed within the application.

§ 15.4.4 When the Contractor disputes the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 The Owner shall not have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations with respect to the work that is subject to a filed lien under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work

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for its intended use. Unless agreed to otherwise in writing, substantial completion shall not occur prior to the issuance of a conditional certificate of occupancy, allowing Owner to fully occupy the premises for its intended business.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Notice of Substantial Completion shall be submitted to the Owner by the Contractor for written acceptance of responsibilities assigned to them in the Notice. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. In the event of liquidated damages associated with delay to reaching the substantial completion date, such shall, if not previously deducted, be deducted from the net retainage sum to be released to the Contractor.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable, including compliance with any lender or Landlord requirements, under the Contract Documents and the Contract fully performed, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor is due and payable. The Owner's acceptance of the Work will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Any such final payment shall be reduced by liquidated damages for final completion as identified in §3.5. Unless otherwise agreed to in writing by the parties and/or required work from Owner's separate contractors is still incomplete, final completion shall not occur prior to issuance of a final, unconditional certificate of occupancy.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete set of as-built documents, warranties, list of subs and a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 as otherwise set forth in Section 9.15

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

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ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY**§ 16.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction;
- .4 Landlord's property

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. Knowing failure on the part of the Contractor or its subcontractors to provide Owner with notice of encountering hazardous materials or substances or knowing failure of the Contractor or its subcontractors to cease work upon encountering hazardous materials or substances shall be at Contractor's sole risk for damages and delays resulting therefrom.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE**§ 17.1 Contractor's Insurance**

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

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§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$ 2,000,000.00) general aggregate, and Two Million Dollars (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Two Million Dollars (\$ 2,000,000.00) per claim.

(Paragraphs deleted)

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner and Landlord as an additional insured on a primary and non-contributory basis on the Contractor's Commercial General Liability and excess or umbrella liability policy. Upon written request by the Owner, Contractor shall provide a full copy of any or all of the above policies or coverage endorsements including all endorsements.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional

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insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04. If this level of coverage cannot be provided Owner shall have the election to (a) terminate this Contract, (b) obtain such additional coverage and charge the Contract balance for the cost of such, or (c) waive such portions of the above coverage as cannot be obtained and proceed with the contract. The same options shall be available to the Owner if the CGL Policy includes exclusions or limitations to coverage that are contrary to exclusion terms that have been approved by the Department of Insurance for the state in which the Project is being constructed, which effectively eliminate insurance coverage for the particular premises, or which are less than any insurance requirements placed upon the Project by the Landlord.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
Excess Liability ("Umbrella")	\$5,000,000 per occurrence and \$5,000,000 in the aggregate for Bodily Injury and Property Damage

§ 17.1.15 Casualty

In the event of a casualty during construction of the Tenant Improvements, the terms of the lease between Owner and Landlord shall govern the distribution of any insurance proceeds resulting therefrom.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Contractor shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions.

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§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Contractor shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Contractor shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Contractor shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Owner's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Owner: (1) the Owner, upon receipt of notice from the Contractor, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Contractor waives all rights against the Owner, Subcontractors, and Sub-subcontractors to the extent any loss to the Contractor would have been covered by the insurance had it not expired or been cancelled. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Contractor its just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

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(Paragraphs deleted)

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and/or Landlord's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work. Any such corrective work, including correction of any other work or property sustaining damage as a result of the defective work, shall be commenced within 7 calendar days of notice of the defective work, unless the defective work is associated with a health or safety hazard in which case work shall commence immediately upon receipt of notice. If the corrective work will entail a period of time in excess of seven (7) calendar days, Contractor shall immediately notify the Owner and shall provide a schedule adjustment showing the work to be completed without change in the Schedule completion date.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Landlord shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner or Landlord fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. This one year period shall not diminish or waive Contractor's obligation to correct any latent defects and resulting damage during any applicable statute of limitations or statute of repose. Landlord shall be a third party beneficiary of this Article 18 and entitled to enforce the terms hereof.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate

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time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner or Owner's independent testing agency or local code officials may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:
(Name, address, email address and other information)

Gary Roberts

Cell: 732.687.6505
Email: gary.r@dhl.com

§ 19.5 The Contractor's representative:
(Name, address, email address and other information)

Muzalier Gaussaint
Scungio Borst Associates
Project Manager
Cell: 856.780.0719
Email: mgaussaint@scungioborst.com

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7 Non-Solicitation

During the period commencing from the date of this Agreement and ending one year following either the Substantial Completion Date or the Termination of the Contract Date, the Owner shall not, without the Contractor's prior written consent, directly or indirectly: (i) solicit or encourage any person to leave the employment or other service of the Contractor or its Affiliates; or (ii) hire, on behalf of the Owner or any other person or entity, any person who has left the employment within the one year period following the termination of that person's employment with the Contractor or its Affiliates.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Owner fails to certify payment as provided in Section 15.4.1 for a period of 30 days, through no fault of the Contractor, or if the Owner fails to make an approved payment as provided in Section 4.1.3 for a period of an additional 30 days, subject to any additional time set forth above due to lender or landlord review, the Contractor may, upon seven additional days' notice to the Owner terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on such Work, and costs incurred by reason of such termination.

(Paragraph deleted)

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors and/or fails to effectuate a discharge of any filed lien as set forth in the Contract;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon determination that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum less liquidated damages, if any, exceeds costs of finishing the Work, including compensation for an Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

Contractor is entitled to receive the Fee established in the initial Cost of the Work as shown in the initial Schedule of Values at the start of the Work plus any Fee established in approved Change Orders, in each case, prorated based upon the amount of work completed on such, but unpaid as of the effective date of the Termination for Convenience.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Owner for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Owner or 30 days after submission of the matter to the Owner, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work or the applicable Statute of Repose, whichever is later. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 As an absolute precondition, except as set forth below, the parties shall engage in and endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American

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Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Such arbitration shall be the exclusive remedy for any disputes that cannot be resolved by mediation and shall be final and binding upon the parties. The parties each understand and agree that this arbitration selection shall constitute a full and complete waiver of their rights to file a lawsuit, unless any statutory provisions pertaining to lien claims otherwise require or as set forth in Section 21.7. The parties further acknowledge that this provision represents a knowing waiver of the rights to have the matter heard and decided by a judge or jury, except for purposes of enforcement. Any arbitration proceeding shall occur within the Commonwealth of Pennsylvania, City of Philadelphia and any proposed arbitrators shall be comprised of qualified arbitrators proximate to the City of Philadelphia.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable applying the law of the Commonwealth of Pennsylvania a court of competent jurisdiction within the Commonwealth of Pennsylvania.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

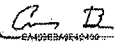
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Except as otherwise specifically provided in this Agreement, Owner shall not be liable to Contractor for any costs for principal office expenses, except those expenses for the compensation of personnel stationed there that may perform work for the Project and any other home office overhead. Except as otherwise specifically provided in this Agreement, neither party nor any of its employees, officers, or directors are liable to the other party for indirect, special, incidental, punitive, consequential or exemplary damages, including loss of profits or revenue, loss of use, cost of capital, down time costs, loss of production, loss of opportunity, loss of goodwill, and/or claims of customers of the other party for such damages, and each party hereby waives any right to the same; and each party hereby releases the other party and their respective employees, officers and directors from liability to the other for such damages. Contractor shall obtain from all subcontractors and vendors for the benefit of Owner releases from all such liability in accordance with the foregoing provisions of this Section. Owner agrees that the above waiver and release extends to Contractor's subcontractors. The parties agree that the following shall not be construed or deemed to be

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indirect, special, incidental, consequential or exemplary damages for purposes of this Agreement: (i) damages resulting from personal injuries (including death) and illnesses, property damage, gross negligence, reckless or intentional misconduct, infringement, misappropriation, or breaches of confidentiality, (ii) costs necessary to properly correct the Work and any resulting property damage, (iii) third party damages that either party is obligated to indemnify for pursuant to this agreement and (iv) damages that are liquidated in this Agreement.

This Agreement entered into as of the day and year first written above.

DocuSigned by:

OWNER (Signature)
Craig Brace VP, Real Estate
(Printed name and title)


CONTRACTOR (Signature)
Jim Buckley President
(Printed name and title)

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Additions and Deletions Report for AIA® Document A104™ – 2017

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PAGE 1

AGREEMENT made as of the 14th day of October in the year 2021

...

KLS Logistics, Inc
c/o DHL Supply Chain (USA)
360 Westar Boulevard
Westerville, Ohio 43082
Attention: Legal Department

...

Scungio Borst Associates
2 Riverside Drive, Suite 500
Camden, NJ 08103
Phone: 856.757.0100

...

PLCB Warehouse Improvements – Phases 2
11601 Roosevelt Blvd
Philadelphia, PA 19154

This project is the improvement work to the existing active Pennsylvania Liquor Control Board distribution building. Owner leases the building from NP Roosevelt Industrial II, LLC ("Landlord") The improvements for these phases consists of electrical and plumbing work for new equipment placement and relocation of existing equipment along with associated work as well as new sprinkler lines and reworking existing sprinkler heads in select storage racks.

...

N/A

PAGE 2

☐ ~~_____~~ ☒ The date of this Agreement.

PAGE 3

☐ Not later than ~~()~~ calendar days from the date of commencement of the Work.

☒ By the following date: January 31, 2022.

...

☐ ~~_____~~ ☒ Stipulated Sum, in accordance with Section 3.2 below

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User Notes:

(911815275)

...

§ 3.2 The Stipulated Sum shall be (\$—), Eight Hundred Ninety-Six Thousand One Hundred Ninety-Two and 00/100 Dollars (\$ 896,192.00), subject to additions and deductions as provided in the Contract Documents.

...

N/A

PAGE 4

Permit Allowance

\$1,257.00

~~§ 3.3 Cost of the Work Plus Contractor's Fee~~ § 3.2.4.1 In preparing the Contractor's Stipulated Sum Price proposal, due to the lack of existing documentation in creation of the Scope of Work, the Contractor has included a contingency for the Contractor's use following notice to and approval by Owner and in accordance with § 3.2.4.2 and § 3.2.4.3 to cover those costs that are included in the Stipulated Sum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.4.2 The Contractor Contingency shall exist to cover expected but unknown costs that are not detailed in the Stipulated Sum Price, or increased costs properly incurred in the performance of the Work which arise after the beginning of the Work and which were and which could not have reasonably been anticipated, but which are not properly considered a Change Order, such as (i) refinement of details of design within the scope and standard of quality and quantities on which the Stipulated Sum Price is based, (ii) schedule acceleration, used in the interest of the Contractor to benefit the Project schedule through the use of premium time or overtime for select trades or equipment costs (except to the extent the Contractor or a Subcontractor is at fault), (iii) shift work, design conflicts and changes in the final design plans (iv) availability of material, material or labor cost escalations, (v) corrective Work as a result of damage by parties unknown, or (vi) any other items or costs necessary or appropriate to the timely and proper completion of the Project. Amounts may be charged against Contingency only with the Owner's written consent, which shall not be unreasonably withheld. When Owner has approved a draw against Contingency, the Contractor shall increase the relevant Trade Work budgeted line item(s) by the amount of the decrease the Contingency line item accordingly. In no circumstances shall Contingency be transferred or applied to Contractor's staffing costs or General Conditions, unless approved in advance by Owner.

§ 3.2.4.3 The Contractor's contingency is not intended for nor shall it be used to pay for costs related to the following: errors or omissions in the information provided to the Contractor in developing the Scope of Work; discrepancies in the construction of the existing building pertaining to applicable building code requirements; and/or enhancements or additions to the Scope of Work requested by the Owner appropriately addressed under Article 13.

~~§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.~~ § 3.2.4.4 Unspent Contingency. Any unspent contingency remaining as of the date of final completion shall be returned to the Owner by the Contractor with the remaining balance due the Owner issued as a deduct Owner Change Order.

~~§ 3.3.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)~~

~~§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price~~

~~§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.~~

~~§ 3.4.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)~~

~~§ 3.4.3 Guaranteed Maximum Price~~

~~§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$—), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum~~

~~sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. (Insert specific provisions if the Contractor is to participate in any savings.)~~

~~§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)~~

~~§ 3.4.3.3 Unit Prices, if any:~~

~~(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)~~

Item	Price
------	-------

~~§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

~~§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.~~

~~§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.~~

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\$500.00 per day

...

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the and partial lien releases for Contractor, all subcontractors, sub-subcontractors and material suppliers submitted to the Owner by the Contractor and draw request submitted by the Owner, Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

:

§ 4.1.3 Provided that an Application for Payment is received by the Architect-Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the month last day of the same month subject to Contractor submitting required partial lien releases for prior payment and Owner approval of requested percent complete progress payments, which shall not be unreasonably withheld. If an Application for Payment is received by the Architect after the date fixed above, Owner after the date fixed above or revisions to initial Application for Payment submission are necessary and provided to Owner in a timely fashion, payment shall be made by the Owner not later than (—) thirty (30) days after the Architect-Owner receives the Application for Payment. Payment

~~(Federal, state or local laws may require payment within a certain period of time.)~~

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner ~~may~~will withhold retainage from the payment otherwise due as follows:

~~(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)~~

Retainage amounting to ten percent (10%) of the value of each subcontractor's work included in each progress payment until Substantial Completion. At the first Application for Payment submitted after Substantial Completion (as defined in section 15.6.3), retainage shall be reduced to five percent (5%) for all subcontractors and vendors.

No retainage will be held against Contractor's General Conditions, Staffing, Insurance, Taxes, Overhead and Fee.
PAGE 6

~~(Insert rate of interest agreed upon, if any.)~~

prime rate plus 1

% 1

...

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when Owner has determined that the Work has been completed and accepted by Owner

...

- .3 a final Certificate ~~for Payment has been issued by the Architect in accordance with Section 15.7.1 of~~
Occupancy has been delivered to the Owner by Contractor.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the ~~issuance of the Architect's final Certificate for Payment, or as follows:~~Final Payment conditions above have been completed.

...

☒ [X] Arbitration pursuant to Section 21.6 of this Agreement

...

~~§ 6.1.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~(Insert the date of the E203 2013 incorporated into this Agreement.)~~

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§ 6.1.3 The Supplementary and other Conditions of the Contract:

See attached Exhibit "C"

Document	Title	Date	Pages
...			
N/A			
...			

Section	Title	Date	Pages
---------	-------	------	-------

...

See attached Exhibit "C"

...

Number	Title	Date
--------	-------	------

...

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

...

[X] Exhibit A, Determination of the Cost of the Work.

[] AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204 2017 incorporated into this Agreement.)

...

[] The Sustainability Plan:

Title	Date	Pages
-------	------	-------

...

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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Exhibit "B"	Proposal Form		
Exhibit "D"	Scope Clarifications and Exclusion		
Exhibit "E"	Contractor's Preliminary, Not for Construction Schedule and Sequence of Work		
Exhibit "F"	Labor Rates		

...

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect-Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Architect and the Architect's~~ Contractor and Contractor's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

...

§ 7.5.1 The ~~Architect and the Architect's~~ Contractor and Contractor's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The ~~Contractor, Subcontractors, Sub-subcontractors, and suppliers~~ shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's~~ Contractor's or Contractor's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect and the Architect's~~ Contractor and Contractor's consultants.

...

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

~~§ 7.7 Building Information Models Use and Reliance~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

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§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be deemed mandatory, non-waivable and an absolute precondition to the relief sought by the party required to provide notice, and provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, ~~or by electronic transmission in accordance with AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~ by certified or registered mail providing proof of delivery or by electronic transmission

~~(If other than in accordance with AIA Document E203™ 2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~

...

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.9.2 Notice of Claims shall be provided in writing as set forth in §7.9.1, above, and shall be deemed duly served only if delivered to the designated representative of the party to whom the notice is being addressed only if served by certified or registered mail or by courier with proof of delivery or by overnight delivery with record of delivery. A party may provide electronic notice, which will be effective upon receipt if such is also delivered by one of the methods above.

...

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site upon request of the Contractor.

...

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. All of the above shall be approved and/or secured as a condition precedent to Owner's issuance of Notice to Proceed.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without further notice and without prejudice to any other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect.~~ The Owner may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional ~~an Architect's~~ services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner ~~or the Architect,~~ or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

...

~~§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.~~

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before commencing on-site Work and before starting each portion of the Work, carefully study and compare the various Contract Documents relative to the site and that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, The Contractor shall promptly report to the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Contractor's proceeding with the Work or such portions of it as are designated in this Section shall constitute a representation by the Contractor that it

has made a reasonable inspection and has satisfied itself that the Work can be performed consistent with the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect~~ Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect may require~~ Owner may require. Notwithstanding the preceding sentence, Contractor shall perform its Work consistent with and in accordance with applicable laws, ordinances, codes, rules and regulations as well as with all applicable industry standards set forth in the Plans and Specifications pertaining to the construction.

...

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall assign a full time, qualified superintendent to oversee the Work, who shall be present at all times when Contractor's forces or those of its subcontractors are present. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, ~~water, heat, utilities,~~ transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall require its forces and those of its subcontractors to comply with all worksite requirements of the Owner and shall protect Owner's property from damage during the performance of the Work.

§ 9.3.3 The Contractor may make a substitution only with the consent of the ~~Owner, after evaluation by the Architect~~ Owner and in accordance with a Modification.

...

The Contractor warrants to the Owner and ~~Architect~~ that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or ~~permit~~ permit for a period of one year from the Date of Substantial Completion. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

...

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Unused portions of Owner Allowances will be returned to the Owner as a deduct change order less the value of the Contractor's Fee.

...

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. In the event of any delays to the project schedule which are not subject to a time extension or otherwise excusable under the terms of the Contract, the Contractor shall promptly provide upon request by the Owner or the Construction Manager a make-up schedule providing for completion at Contractor's cost, of the work within the Contract duration.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect at time of Notice to Proceed and as adjusted thereafter by contract progress and / or modification.

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§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect in a timely fashion with sufficient time for review without affecting the Project Schedule, to the Owner. Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents together with any requests for information, in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. Owner reasonable time for review. Contractor shall identify all long lead material or equipment and shall include such lead times within its Project Schedule. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals. In the event that Contractor issues a submittal for the Owner review that proposes changes from the Contract Documents, Contractor shall advise and identify any such deviations as part of the submittal and shall provide any information requested by the Owner to support the request for approval of such submittal.

...

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect required by the Contract Documents, the Owner will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect-Owner will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's-Owner's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect-Owner will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

...

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall observe all site use limitations and restrictions as may be required by the Landlord and shall not interfere with Landlord's use of its property.

...

The Contractor shall provide the Owner and Architect-Owner, the Landlord with access to the Work in preparation and progress wherever located.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner ~~and Architect~~ harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner ~~or Architect~~. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect~~ Owner.

...

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, Landlord~~, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

...

ARTICLE 10 — ARCHITECT

§ 9.15.3 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Landlord ~~and its agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out any claims by its subcontractors or suppliers for payment for work, services, labor materials or equipment provided to the Contractor for the performance of the Work under this Contract where Owner has paid Contractor for such work, services, labor, materials or equipment or where such is being sought as extra or changed work on the part of the subcontractor or supplier which has not been subject of a Change Order or Change Directive issued under Article 13, or a Claim, as issued under Chapter 21, of this Contract.~~

ARTICLE 10 OWNER AS CONTRACT ADMINISTRATOR

§ 10.1 The ~~Architect~~ Owner will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the ~~Architect~~ issues the final Certificate for Payment. The ~~Architect~~ will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 Duties, responsibilities, and limitations of authority of the ~~Architect~~ as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and ~~Architect~~. Consent shall not be unreasonably withheld.

§ 10.3 The ~~Architect~~ Owner will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ~~Architect~~ Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Owner will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the ~~Architect will keep the Owner~~ Owner will be reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the ~~Owner~~ Contractor (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The ~~Architect~~ Owner will not be responsible

for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect~~ Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the ~~Architect's~~ Owner's evaluations of the Work and of the Contractor's Applications for Payment, the ~~Architect~~ Owner will review and certify the amounts due the Contractor and will issue ~~Certificates for Payment~~ in such amounts.

§ 10.6 The ~~Architect~~ Owner has the authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The ~~Architect~~ Owner will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

~~§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.~~

§ 10.9 The ~~Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner ~~and Architect~~ of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner ~~or Architect~~ has made reasonable written objection within ~~ten-five~~ days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner ~~and Architect~~, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 Upon request by Owner through the Construction Manager, Contractor shall provide copies of subcontractor certificates of insurance to the Owner and shall require subcontractors to add the Owner, its Designee, and/or Landlord to the policies as "additional insureds" with primary and non-contributory coverage.

§ 11.5 For any trade requiring a government issued license or registration, Contractor shall only engage licensed or registered subcontractors to perform that Work.

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§ 12.1.1 The parties understand and agree that the Owner will engage contractors to perform separate work functions. Contractor shall provide for and allow staging and access to the site for their work as set for the below and shall include their work within the Project Schedule and coordinate the scheduling of such separate contractors.

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§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, ~~Contractor, and Architect, and Contractor~~ or by written Construction Change Directive signed by the ~~Owner and Architect~~ Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. A signed Change Order shall be deemed final for all changed, added or deleted Work and all schedule impacts associated with the described Work.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and ~~Architect~~, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request partial payment for Work completed pursuant to the Construction Change Directive. The ~~Architect-Owner~~ will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the ~~Architect will prepare a Change Order. Contractor will prepare a Change Order for Owner Review and Approval.~~ Such approval shall not be unreasonably withheld. Failure to agree upon a price for increased or decreased cost, or a dispute over whether or not the disputed work is changed or within Contractor's scope of work under this Contract shall not excuse the Contractor from performing as directed and the parties reserve the right to file a Claim under the terms of this Contract.

§ 13.3 The ~~Architect-Owner~~ will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the ~~Architect-Owner~~ and shall not proceed to implement the change in the Work until it receives a written directive, at which time it shall promptly proceed with the identified Work even if there is disagreement as to the cost or time impact, which shall be addressed through a Claim as set for the herein.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner ~~and Architect~~ promptly and before conditions are disturbed.

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§ 14.4 The date of Substantial Completion is the date certified by the ~~Architect-Owner~~ in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the ~~Architect-Owner~~ determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect may-Owner~~ and Contractor may mutually determine, subject to the provisions of Article 21. The extension of time shall be the exclusive remedy for the contractor and under no circumstances shall owner be subject to increased costs to the Contractor associated with any such delays, unless Owner, its agents or representatives, the Government or Landlord caused the delay

§ 14.6 COVID-19. The Owner and Contractor acknowledge the present and ongoing circumstances regarding the novel coronavirus / COVID-19 pandemic ("COVID-19"). The Contractor represents to the Owner that it has considered and planned for the Work under these present conditions, and agrees to perform it for the Contract Sum and within the Contract Time – subject to adjustments as provided in this Agreement for non-COVID-19 changes, if any –

based on information currently reasonably available concerning COVID-19, including but not limited to relevant health and safety regulations and restrictions. In the event the Contractor contends that changes after the date of this Agreement to the COVID-19-related laws, rules, orders, regulations, or directions by any governmental authority with jurisdiction over the Project will impact the Work, including any potential savings or schedule expediting, the Contractor will immediately notify the Owner in writing with a description of the potential impacts and the Contract Time and Contract Sum will be equitably adjusted for such changes to the COVID-19-related laws, rules, orders, regulations, or directions. Additionally, if a Subcontractor, Sub-subcontractor or supplier must cease operations or otherwise cannot progress its work as anticipated due to the impacts of COVID-19, such resulting delay to the progress of the Work shall be considered a Force Majeure Delay.

In order to assure that the Contractor and its subcontractors are adhering to CDC guidelines and the directions by local health officials, the Owner and Contractor hereby agree to act together in good faith to address the requirements of the situation including, but not limited to, any need to review the Project schedule, create a logistics plan, or other special jobsite procedures. Notwithstanding the foregoing, the Contractor shall be solely responsible for implementing these procedures in addition to its already existing health and safety requirements. The Contractor shall report to the Owner weekly during the pendency of the COVID-19 pandemic on the jobsite conditions and the Contractor's ongoing efforts to ensure compliance with these measures. Notwithstanding the foregoing, the Owner will not have any control over the Contractor's means and methods of construction.

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§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the ~~Architect~~ Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the ~~Architect~~ Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price Cost of the Work under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee:

§ 15.2.2 The Control Estimate shall include:

1. the documents enumerated in Article 6, including all Modifications thereto;
2. a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
3. a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
4. a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and
5. a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare

the ~~Control Estimate Stipulated Sum Price~~ cost breakdown (Exhibit "B") with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

~~§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.~~

§ 15.3.1 ~~At least ten days before the date established for each progress payment,~~ On the first business day of each month, the Contractor shall submit to the ~~Architect-Owner~~ an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner ~~or Architect require;~~ require, including all subcontractor work and invoices for work encompassed within the application; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. Contractor shall provide lien waivers with each application for payment, including for progress and final applications.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit ~~payrolls,~~ petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor ~~plus payrolls~~ for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

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§ 15.4.1 The ~~Architect-Owner~~ will, within seven days after receipt of the Contractor's Application for Payment, either issue ~~to the Owner a Certificate for Payment, with a copy a Certificate for Payment~~ to the Contractor, for such amount as the ~~Architect-Owner~~ determines is properly due, or notify the Contractor ~~and Owner~~ of the ~~Architect's-Owner's~~ reasons for withholding certification in whole or in part as provided in Section 15.4.3. No certificate for payment shall be effective unless and until the Contractor shall provide for itself and for subcontractors performing work or primary suppliers providing materials or equipment encompassed within the payment application a waiver and release of lien for prior work performed or materials and equipment provided and for the work, materials and equipment in the payment application, subject only to Owner's payment of the instant application.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the ~~Architect to the Owner,~~ based on the ~~Architect's-Owner's~~ evaluations of the Work and the data in the Application for Payment, that, to the best of the ~~Architect's-Owner's~~ knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. Following review of a Payment Application, the Owner will identify the amount of the Application which is approved and provide Notice to the Contractor of any disapproved sums no later than twenty (20) days after receipt of the Application by it or its designee. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the ~~Architect-Owner~~. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect-Owner~~ has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The ~~Architect-Owner~~ may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the ~~Architect's-Owner's~~ opinion the representations to the Owner required by

Section 15.4.2 cannot be made. If the ~~Architect-Owner~~ is unable to certify payment in the amount of the Application, the ~~Architect-Owner~~ will notify the Contractor and ~~Owner~~ as provided in Section 15.4.1. If the Contractor and the ~~Architect-Owner~~ cannot agree on a revised amount, the ~~Architect-Owner~~ will promptly issue a Certificate for Payment for the amount for which the ~~Architect-Owner~~ is able to make such representations to the ~~Owner~~. The ~~Architect~~. The ~~Owner~~ may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the ~~Architect's~~ ~~Owner's~~ opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

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.5 damage to the ~~Owner-Owner, Landlord~~ or a Separate Contractor;

...

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

.8 the filing of any lien by a subcontractor or supplier to the Contractor or to a subcontractor of the Contractor on work previously paid for by or on behalf of the Owner or for work not subject to an approved change order by the Owner.

.9 rejection by the landlord or lender of Work in place encompassed within the application.

§ 15.4.4 When either party ~~the Contractor~~ disputes the ~~Architect's-Owner's~~ decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

...

§ 15.5.2 ~~Neither the Owner nor Architect shall.~~ The Owner shall not have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A ~~Certificate for Payment~~, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations with respect to the work that is subject to a filed lien under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Unless agreed to otherwise in writing, substantial completion shall not occur prior to the issuance of a conditional certificate of occupancy, allowing Owner to fully occupy the premises for its intended business.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the ~~Architect-Owner~~ a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the ~~Architect-Owner~~ will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the ~~Architect-Owner~~ determines that the Work or designated portion thereof is substantially complete, the ~~Architect-Owner~~ will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract

Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The ~~Certificate-Notice~~ of Substantial Completion shall be submitted to the Owner and by the Contractor for their written acceptance of responsibilities assigned to them in the ~~Certificate-Notice~~. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. In the event of liquidated damages associated with delay to reaching the substantial completion date, such shall, if not previously deducted, be deducted from the net retainage sum to be released to the Contractor.
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§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect-Owner~~ will promptly make such inspection and, when the ~~Architect finds the Work acceptable-Owner finds the Work acceptable, including compliance with any lender or Landlord requirements,~~ under the Contract Documents and the Contract fully performed, the ~~Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment is due and payable. The Owner's acceptance of the Work will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Any such final payment shall be reduced by liquidated damages for final completion as identified in §3.5. Unless otherwise agreed to in writing by the parties and/or required work from Owner's separate contractors is still incomplete, final completion shall not occur prior to issuance of a final, unconditional certificate of occupancy.~~

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete set of as-built documents, warranties, list of subs and a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

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- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment-payment;~~
or
- .5 as otherwise set forth in Section 9.15

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- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of ~~construction-construction;~~
- .4 Landlord's property

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner ~~or Architect~~ or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

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§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. Knowing failure on the part of the Contractor or its subcontractors to provide Owner with notice of encountering hazardous materials or substances or knowing failure of the Contractor or its subcontractors to cease work upon encountering hazardous materials or substances shall be at Contractor's sole risk for damages and delays resulting therefrom.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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ARTICLE 17 — INSURANCE AND BONDS

ARTICLE 17 INSURANCE

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§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$) each occurrence, (\$) general aggregate, and (\$ One Million Dollars (\$1,000,000.00) each occurrence,~~ Two Million Dollars (\$ 2,000,000.00) general aggregate, and Two Million Dollars (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

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§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ 17.1.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~(\$) per claim and (\$) in the aggregate.~~ Two Million Dollars (\$ 2,000,000.00) per claim.

~~§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

~~§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner and Landlord as an additional insured on a primary and non-contributory basis on the Contractor's Commercial General Liability and excess or umbrella liability policy. Upon written request by the Owner, Contractor shall provide a full copy of any or all of the above policies or coverage endorsements including all endorsements.

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§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants-Owner as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04. If this level of coverage cannot be provided Owner shall have the election to (a) terminate this Contract, (b) obtain such additional coverage and charge the Contract balance for the cost of such, or (c) waive such portions of the above coverage as cannot be obtained and proceed with the contract. The same options shall be available to the Owner if the CGL Policy includes exclusions or limitations to coverage that are contrary to exclusion terms that have been approved by the Department of Insurance for the state in which the Project is being constructed, which effectively eliminate insurance coverage for the particular premises, or which are less than any insurance requirements placed upon the Project by the Landlord.

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Excess Liability ("Umbrella")

\$5,000,000 per occurrence and \$5,000,000 in the aggregate for Bodily Injury and Property Damage

§ 17.1.15 Casualty

In the event of a casualty during construction of the Tenant Improvements, the terms of the lease between Owner and Landlord shall govern the distribution of any insurance proceeds resulting therefrom.

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§ 17.2.2.1 The ~~Owner~~ Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The ~~Owner's~~ Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the ~~Owner-Contractor~~ shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the ~~Owner-Contractor~~ shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the ~~Owner-Contractor~~ shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The ~~Owner-Contractor~~ shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the ~~Owner-Contractor~~ shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the ~~Contractor's-Owner's~~ request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the ~~Owner-Contractor~~ becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the ~~Owner-Contractor~~ shall provide notice to the ~~Contractor-Owner~~ of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the ~~Contractor-Owner~~: (1) the ~~Contractor-Owner~~, upon receipt of notice from the ~~Owner-Contractor~~, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the ~~Owner-Contractor~~ waives all rights against the ~~Contractor-Owner~~, Subcontractors, and Sub-subcontractors to the extent any loss to the ~~Owner-Contractor~~ would have been covered by the insurance had it not expired or been cancelled. If the ~~Contractor-Owner~~ purchases replacement coverage, the cost of the insurance shall be charged to the ~~Owner-Contractor~~ by an appropriate Change Order. The furnishing of notice by the ~~Owner-Contractor~~ shall not relieve the ~~Owner-Contractor~~ of any contractual obligation to provide required insurance.

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§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) ~~the Architect and Architect's consultants;~~ and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance. This provision does not apply to the Owner's landlord unless a similar provision exists within Owner's lease or any other written agreement with the landlord.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any

applicable mortgagee clause. The Owner shall pay the ~~Architect and Contractor their~~ Contractor its just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the ~~Architect and Contractor~~ shall make payments to their consultants and Subcontractors in similar manner.

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~~§ 17.3 Performance Bond and Payment Bond~~

~~§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.~~

~~§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~

§ 18.1 The Contractor shall promptly correct Work rejected by the ~~Architect~~ Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the ~~Architect's~~ Owner's and/or Landlord's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work. Any such corrective work, including correction of any other work or property sustaining damage as a result of the defective work, shall be commenced within 7 calendar days of notice of the defective work, unless the defective work is associated with a health or safety hazard in which case work shall commence immediately upon receipt of notice. If the corrective work will entail a period of time in excess of seven (7) calendar days, Contractor shall immediately notify the Owner and shall provide a schedule adjustment showing the work to be completed without change in the Schedule completion date.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Landlord shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner or Landlord fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. This one year period shall not diminish or waive Contractor's obligation to correct any latent defects and resulting damage during any applicable statute of limitations or statute of repose. Landlord shall be a third party beneficiary of this Article 18 and entitled to enforce the terms hereof.

...

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and authority. Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect Owner timely notice of when and where tests and inspections are to be made so that the ~~Architect~~ Owner or Owner's independent testing agency or local code officials may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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§ 19.7 Non-Solicitation

During the period commencing from the date of this Agreement and ending one year following either the Substantial Completion Date or the Termination of the Contract Date, the Owner shall not, without the Contractor's prior written consent, directly or indirectly; (i) solicit or encourage any person to leave the employment or other service of the Contractor or its Affiliates; or (ii) hire, on behalf of the Owner or any other person or entity, any person who has left the employment within the one year period following the termination of that person's employment with the Contractor or its Affiliates.

...

If the ~~Architect~~ Owner fails to certify payment as provided in Section 15.4.1 for a period of 30 ~~days~~ days, through no fault of the Contractor, or if the Owner fails to make an approved payment as provided in Section 4.1.3 for a period of 30 ~~days~~ days, an additional 30 days, subject to any additional time set forth above due to lender or landlord review, the Contractor may, upon seven additional days' notice to the Owner ~~and the Architect~~, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead ~~and profit~~, and profit on such Work, and costs incurred by reason of such ~~termination, and damages~~ termination § 20.2 Termination by the Owner for Cause

§ 20.2 Termination by the Owner for Cause

- ...
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the ~~Subcontractors~~ Subcontractors and/or fails to effectuate a discharge of any filed lien as set forth in the Contract;

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§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon ~~certification by the Architect~~ determination that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

...

§ 20.2.4 If the unpaid balance of the Contract Sum less liquidated damages, if any, exceeds costs of finishing the Work, including compensation for ~~the an~~ Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this~~ This obligation for payment shall survive termination of the Contract.

...

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, fee, if any, as follows:

...

Contractor is entitled to receive the Fee established in the initial Cost of the Work as shown in the initial Schedule of Values at the start of the Work plus any Fee established in approved Change Orders, in each case, prorated based upon the amount of work completed on such, but unpaid as of the effective date of the Termination for Convenience.

...

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect-Owner for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect-Owner or 30 days after submission of the matter to the Architect, Owner, be subject to mediation as a condition precedent to binding dispute resolution.

...

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect-Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work-Work or the applicable Statute of Repose, whichever is later.. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

...

§ 21.5 ~~The parties shall~~ As an absolute precondition, except as set forth below, the parties shall engage in and endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Such arbitration shall be the exclusive remedy for any disputes that cannot be resolved by mediation and shall be final and binding upon the parties. The parties each understand and agree that this arbitration selection shall constitute a full and complete waiver of their rights to file a lawsuit, unless

any statutory provisions pertaining to lien claims otherwise require or as set forth in Section 21.7. The parties further acknowledge that this provision represents a knowing waiver of the rights to have the matter heard and decided by a judge or jury, except for purposes of enforcement. Any arbitration proceeding shall occur within the Commonwealth of Pennsylvania, City of Philadelphia and any proposed arbitrators shall be comprised of qualified arbitrators proximate to the City of Philadelphia.

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§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof, applying the law of the Commonwealth of Pennsylvania a court of competent jurisdiction within the Commonwealth of Pennsylvania.

...

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- 1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Except as otherwise specifically provided in this Agreement, Owner shall not be liable to Contractor for any costs for principal office expenses, except those expenses for the compensation of personnel stationed there that may perform work for the Project and any other home office overhead. Except as otherwise specifically provided in this Agreement, neither party nor any of its employees, officers, or directors are liable to the other party for indirect, special, incidental, punitive, consequential or exemplary damages, including loss of profits or revenue, loss of use, cost of capital, down time costs, loss of production, loss of opportunity, loss of goodwill, and/or claims of customers of the other party for such damages, and each party hereby waives any right to the same; and each party hereby releases the other party and their respective employees, officers and directors from liability to the other for such damages. Contractor shall obtain from all subcontractors and vendors for the benefit of Owner releases from all such liability in accordance with the foregoing provisions of this Section. Owner agrees that the above waiver and release extends to Contractor's subcontractors. The parties agree that the following shall not be construed or deemed to be indirect, special, incidental, consequential or exemplary damages for purposes of this Agreement: (i) damages resulting from personal injuries (including death) and illnesses, property damage, gross negligence, reckless or intentional misconduct, infringement, misappropriation, or breaches of confidentiality, (ii) costs necessary to properly correct the Work and any resulting property damage, (iii) third party damages that either party is obligated to indemnify for pursuant to this agreement and (iv) damages that are liquidated in this Agreement.

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Jim Buckley President

Certification of Document's Authenticity***AIA® Document D401™ – 2003***

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:35:48 ET on 10/14/2021 under Order No. 2114251286 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)